

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

GEORGIA WEIGANT  
d/b/a PIONEER BAR & GRILL  
148 E. STATE STREET  
MOSSYROCK, WA 98564

LICENSEE

LICENSE NO. 356029

LCB NO. 22,872

OAH NO. 2008-LCB-0055

FINAL ORDER OF THE BOARD

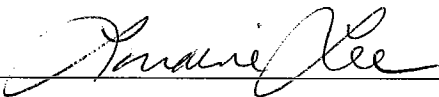
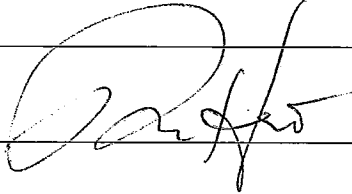
The above entitled matter coming on regularly before the Board, and it appearing that:

1. An administrative hearing was held on April 3, 2009 at the licensee's timely request.
2. The Liquor Control Board's Complaint, dated December 4, 2008, alleged that on September 12, 2008 the Licensee or employee(s) thereof, gave, sold, and/or supplied liquor to a person under the age of twenty-one (21), in violation of RCW 66.44.270 and WAC 314-11-020(1).
3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine and the Licensee Georgia Weigant represented herself.
4. On April 22, 2009, Administrative Law Judge Alice L. Haenle entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
5. No petitions for review were filed by the parties.
6. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE; IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of

Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board and that the liquor license privileges granted to Georgia Weigant d/b/a Pioneer Bar and Grill located at 148 E. State Street in Mossyrock, WA, License number 356029, are hereby suspended for a term of seven (7) days, beginning at 10:00 am on June 11, 2009 until 10:00 am on June 18, 2009. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 20<sup>th</sup> day of May, 2009.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to

Martha P. Lantz, Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APR 23 2009

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

**LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION**

IN THE MATTER OF THE HEARING OF:	)	
	)	OAH NO. 2008-LCB-0055
GEORGIA WEIGANT,	)	NO. 22,872
d/b/a PIONEER BAR & GRILL	)	
148 E. STATE STREET	)	FINDINGS OF FACT,
MOSSYROCK, WA 98564	)	CONCLUSIONS OF LAW,
	)	AND INITIAL ORDER
LICENSEE	)	
	)	
LICENSE NO. 356029-1E	)	
_____	)	

STATEMENT OF THE CASE

On December 4, 2008, the Washington State Liquor Control Board (Board) issued a Complaint to Georgia Weigant, d/b/a Pioneer Bar & Grill (Licensee), 148 E. State Street, Mossyrock, Washington. In its Complaint, the Board charged the following:

That on or about September 12, 2008, the above-named Licensee or employee(s) thereof gave, sold, and/or supplied liquor to a person under the age of twenty-one (21), in violation of RCW 66.44.270 and WAC 314-11-020(1).

The Board's Education and Enforcement Division proposed a seven-day suspension with no option for monetary penalty.

The Licensee timely requested a hearing. The Licensee denies the allegations.

A hearing was held on due and proper notice at Chehalis, Washington, on April 3, 2009.<sup>1</sup> The hearing was held by Administrative Law Judge Alice L. Haenle of the Office of Administrative Hearings.

At the hearing, the Board's Education and Enforcement Division was represented by Assistant Attorney General Brian Considine. The Licensee Georgia Weigant represented herself.

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<sup>1</sup> A prehearing conference was also held on December 4, 2008.

Based on the evidence presented, the undersigned administrative law judge makes the following findings of fact.

### FINDINGS OF FACT

1. Georgia Weigant (Licensee) holds liquor license number 356029-1E. The Licensee operates premises located at 148 E. State Street, Mossyrock, Washington, known as Pioneer Bar & Grill. The premises is a restaurant and lounge.

2. On September 12, 2008, the Lewis County Sheriff's Office and the Board conducted compliance checks of several licensed premises. "Compliance checks" are intended to determine licensees' compliance regarding sales of liquor to underage persons. Compliance checks are done with the assistance of Investigative Aides, who are minors who attempt to purchase liquor.

3. The compliance check of this Licensee involved Liquor Control Enforcement Officer Dawn Tozer, Deputy Chris Rubin, and Deputy Harold Sprouse, with the assistance of a 17-year-old Investigative Aide. Before the compliance checks, Officer Tozer ensured that the Investigative Aide was carrying only his valid Washington driver's license. The driver's license showed his birth date as October 17, 1990. Officer Tozer gave the Investigative Aide money with which to purchase liquor. Office Tozer took a photograph of the Investigative Aide, who was wearing a WSU tee shirt, khaki shorts, and Nike shoes. See Exhibit 6.

4. When they arrived at the Pioneer Bar & Grill, Deputy Rubin and the Investigative Aide entered the premises. Deputy Rubin was not in uniform, but was dressed in casual clothing. Deputy Rubin and the Investigative Aide initially sat at a table and were given a menu.

5. After a few minutes, Deputy Rubin and the Investigative Aide sat at the bar. The Investigative Aide ordered two Bud Light beers from the bartender, later identified as Larry Davis. Mr. Davis asked whether the Investigative Aide wanted bottles or draft. The Investigative Aide said he wanted bottles. Mr. Davis brought two Bud Light beers and set them down in front of the Investigative Aide and Deputy Rubin. The Investigative Aide paid Mr. Davis for the beers, which cost \$5.50. Mr. Davis gave the Investigative Aide change. Mr. Davis did not ask the Investigative Aide for identification.

6. After he was served the beers, the Investigative Aide left the premises and reported to Officer Tozer that a sale had been made. The Investigative Aide then remained in Officer Tozer's vehicle, where he completed a written report of the sale. See Exhibit 5.

7. Deputy Sprouse and Officer Tozer then entered the premises and advised Mr.

Davis that he had sold liquor to a minor. The Licensee Ms. Weigant was called and arrived some time later. Deputy Sprouse issued Mr. Davis a criminal citation for sale of liquor to a minor.

8. Officer Tozer prepared an Administrative Violation Notice (Exhibit 1), which was served on Ms. Weigant on October 2, 2008. Ms. Weigant timely requested an administrative hearing.

9. Georgia Weigant is the Licensee. Larry Davis is Ms. Weigant's husband. Ms. Weigant was not present at the Pioneer Bar & Grill at the time of the sale. Although Ms. Weigant testified at the hearing, she did not personally observe the incident.

10. Ms. Weigant stated that Mr. Davis admitted selling liquor to the Investigative Aide. Mr. Davis told Ms. Weigant that he had "no doubt" that the Investigative Aide looked more than 21 years old because he was wearing camouflage clothing. Ms. Weigant indicated that Mr. Davis and others present at the premises said that the Investigative Aide and Deputy Rubin were both wearing camouflage clothing.

11. It is most likely that the Investigative Aide was not wearing camouflage clothing at the time of the premises check. The four Board witnesses all testified credibly that the Investigative Aide was wearing a WSU tee shirt and shorts at the time of the premises check. Officer Tozer took a photograph of the Investigative Aide wearing the tee shirt and shorts. Ms. Weigant did not see the Investigative Aide's clothing. Ms. Weigant's information about the incident came from Mr. Davis and other persons who Ms. Weigant did not identify. The credibility of Ms. Weigant's testimony ultimately depends on the credibility of Mr. Davis and unidentified other persons, none of whom testified at the hearing, so I am unable to assess their credibility. There is no indication that the Investigative Aide took any action to make himself appear older than his actual age.

12. The Licensee has had one other violation within the past two years for furnishing liquor to a minor on May 27, 2008. The Licensee paid a monetary penalty of \$300 in lieu of a five-day license suspension. See Exhibit 8.

13. Ms. Weigant contends that she should not receive an Administrative Violation for the sale, because she was not there and did not know what was happening. Ms. Weigant emphasized that Mr. Davis is the one who sold liquor to the minor.

14. Ms. Weigant also contends that Mr. Davis is not her "employee," because he is not paid. Mr. Davis helps at the bar from time to time when the bar is busy. Mr. Davis does not hold a mandatory alcohol server training (MAST) permit.

Based on the above findings of fact, the undersigned makes the following conclusions of law.

## CONCLUSIONS OF LAW

1. The Board has jurisdiction over this proceeding under chapter 66 of the Revised Code of Washington (RCW). Under RCW 66.24.010, the Board may suspend or cancel a license, so long as the licensee is afforded the opportunity for a hearing under chapter 34.05 RCW. Such a hearing may be conducted by an administrative law judge. In such cases, an initial decision must be issued, subject to review by the Board. A proper hearing was provided in this case.

2. RCW 66.44.270 prohibits furnishing liquor to minors, as follows:

- (1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. . . .

WAC 388-11-020(1) contains a similar prohibition.

3. The record in this case supports the conclusion that the Licensee violated RCW 66.44.270(1) and WAC 314-11-020(1) on September 12, 2008, when the Licensee's employee Larry Davis sold liquor to the Investigative Aide. The Investigative Aide was under the age of 21 years at the time Mr. Davis sold him two Bud Light beers.

4. A licensee is responsible for operation of the licensed premises in compliance with liquor laws and rules of the Board.<sup>2</sup> Any violations committed or permitted by employees will be treated by the Board as violations committed or permitted by the licensee. The Licensee has the responsibility to ensure that employees are properly trained and follow employer policies about the sale of liquor.

5. Contrary to Ms. Weigant's contentions, Mr. Davis was her employee at the time of the sale. Under WAC 314-01-005, "employee" means any person performing services on a licensed premises for the benefit of the licensee. Mr. Davis was performing the service of a bartender. The definition of employee does not require that Mr. Davis be paid for this service, only that the service be done for the benefit of the Licensee, Ms. Weigant. Ms. Weigant need not have made the sale herself to have committed a violation.

6. Under the provisions of RCW 66.24.010, the Board has the authority to suspend a license. Under the provisions of RCW 66.24.120, such a suspension may be vacated upon payment of a monetary penalty in an amount fixed by the Board. The

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<sup>2</sup> WAC 314-11-015(1)(a)

Board's rules contain a list of standard penalties for various offenses.<sup>3</sup> Lesser penalties may be applied if there are mitigating circumstances; greater penalties may apply if there are aggravating circumstances. Here, the Board's Education and Enforcement Division proposed the standard penalty for a second offense of this type within a two-year period.

7. The Board has discretion to administer penalties which suit the circumstances of a case. In this case, the Board did not propose to offer the Licensee an optional monetary penalty. The Board considers liquor sales to minors to be extremely serious. Here, the Licensee had a prior violation in May 2008 for furnishing liquor to a minor. There is nothing in the record which substantially mitigates this violation. Mr. Davis did not ask the Investigative Aide for his identification, which would have established that the Investigative Aide was under the age of 21 years. Under the circumstances of this case, the presiding administrative law judge recommends the proposed penalty of a seven-day suspension be affirmed.

From the foregoing conclusions of law, the undersigned makes the following initial order.

#### INITIAL ORDER

IT IS HEREBY ORDERED That the Board's complaint is sustained. On a date to be established in the Board's final order, liquor license no. 356029-1E of Georgia Weigant, d/b/a Pioneer Bar & Grill, 148 E. State Street, Mossyrock, Washington, shall be suspended for seven days.

DATED at Olympia, Washington, this <sup>2</sup>~~20~~th day of April 2009.

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS

By Alice L. Haenle

Alice L. Haenle

Administrative Law Judge

P.O. Box 42489

Olympia, WA 98504-2489

phone: (360) 753-6261

FAX: (360) 586-6563

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<sup>3</sup> WAC 314-29-015; WAC 314-29-020 through WAC 314-29-035



## APPEAL RIGHTS

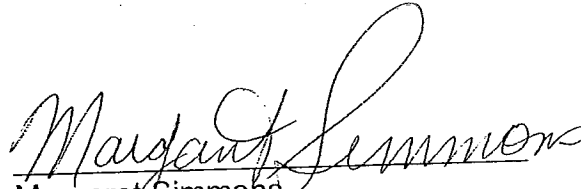
Any party may file a petition for review of the initial order with the Liquor Control Board within twenty days of the date of service of the initial order. RCW 34.05.464, WAC 10-08-211, WAC 314-42-095(2)(a) and WAC 314-42-080(1). The petition for review must (a) identify the parts of the initial order the petitioner objects to and (b) refer to the evidence in the record that supports the petitioner's position.

A petitioner must mail a copy of the petition for review to each of the other parties and their representatives at the same time the petitioner files the petition. Within ten days after service of the petition for review, any other parties may file a response to the petition. WAC 314-42-095(2)(b). A responding party must likewise mail a copy of the response to each of the other parties and their representatives at the same time the responding party files the response.

The members of the Liquor Control Board will review the administrative record, the initial order, the petition for review, and any responses. WAC 314-42-095(3). Following this review, the Board will enter a final order WAC 314-42-095(4). Within ten days of when the Board issues the final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470(1) and WAC 10.08.215. A party may appeal the Liquor Control Board's final order to the Superior Court under RCW 34.05.510 *et seq.*

### Certificate of Mailing

I assert that I mailed true and exact copies of the Findings of Fact, Conclusions of Law and Initial Order to the following parties, postage prepaid this 22nd day of April 2009 from Olympia, Washington.

  
Margaret Simmons  
Legal Secretary

Georgia Weigant  
Pioneer Bar & Grill  
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Mossyrock, WA 98564

Brian Considine  
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